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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,248

08/19/2003

Floyd A. Searer

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07/27/2006

VAN DYKE, GARDNER, LINN AND BURKHART, LLP
2851 CHARLEVOIX DRIVE, S.E.
P.O. BOX 888695
GRAND RAPIDS, MI 49588-8695

EXAMINER

TRAN, HANH VAN

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,248

Applicant(s)

SEARER ET AL

Examiner

Hanh V. Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-15 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-15, 18-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is a Non-Final Office action from the examiner in charge of this application in response to the amendment filed on 5/12/2006. The indicated allowability of claims 3, and 18-19 is hereby withdrawn. Any inconvenience is regretted. A new action is followed.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 3-4, 6, 12-13, 18-20, and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by US Des. 155,949 to Wiley et al.

Wiley et al discloses a shelf comprising all the elements recited in the above listed claims including, such as shown in Figs 1-2, a circular plate member, a plurality of posts mounted to said plate, a band; wherein each post including a slot to receive said band and support said band to form a fence around at least a portion of the plate member, said plate member including a through-hole extending there through to receive a center post, such as shown in Fig 2; wherein said posts each includes a cap (defined as the circular top portion of the post shown in Fig 1) mounted on the distal end of the slot to thereby retain said band in the slot of said fence post.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 5, 7-11, 14-15, 21-23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley et al in view of USP 5,357,871 to Bowman.

Wiley et al discloses all the elements as discussed above except for said plate member having a plurality of through holes extending through said plate member for receiving the ends of the posts, the plate member comprises a pie-shaped plate, said plate member comprises a wood plate, said band comprises a metal band, the posts comprise aluminum posts, each of the posts includes a base portion and a projecting portion, each of said base portions portioned in a respective opening and having a smaller diameter than their respective projecting portion, each of said projecting portion rests on said plate member around a respective opening of said plate member, and said band comprises a plurality of band segments.

In regard to the plate member having through-holes and the band comprising a plurality of band segments, Bowman discloses a shelf comprising a plate member having a plurality of through-holes extending through said plate member, a plurality of posts 42 position in the through-holes of the plate member at the ends of the posts, wherein the through-holes allows the posts to be easily connected to or disconnected from the plate member, and a band comprising a plurality of band segments 40,40' for the purpose of preventing articles from sliding off the plate member. Therefore, it would have been obvious to modify the structure of Lange by providing the plate member with a plurality of through-holes extending through said plate member, and the plurality of posts position in the through-holes of the plate member at the ends of the posts, wherein the through-holes allows the posts to be easily connected to or disconnected from the plate member, and a band comprising a plurality of band segments 40,40' for the purpose of preventing articles from sliding off the plate member, as taught by Bowman, since both teach alternate conventional shelf structure, used for the same intended purpose of supporting articles thereon, thereby providing structure as claimed.

In regard to the plate member comprises a pie-shaped plate, said plate member comprises a wood plate, said band comprises a metal band, the posts comprise aluminum posts, each of the posts includes a base portion and a projecting portion, each of said base portions portioned in a respective opening and having a smaller diameter than their respective projecting portion, each of said projecting portion rests on said plate member around a respective opening of said plate member, the examiner takes the Official position that (1) pie-shaped plate is well known in the art, therefore it

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would have been obvious to modify the structure of Lange by providing a pie-shaped plate member, (2) wood, metal or aluminum each is a well known and commercially available product, therefore, it would have been well within the level of one skill in the art to have the plate member comprises a wood plate, the band comprises a metal band, and the posts comprise of aluminum posts, and (3) it is well known in the art to provide a post with the base portion having a smaller diameter than the projecting portion, such that the projecting portion acting as shoulder and rests on a plate member around a respective opening.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT *HVT*
July 23, 2006

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Lanna Mai